

REFERENCE TITLE: marriage dissolution; disposition of property

State of Arizona  
Senate  
Forty-ninth Legislature  
First Regular Session  
2009

# **SB 1052**

Introduced by  
Senator Gray L

AN ACT

AMENDING SECTION 25-318, ARIZONA REVISED STATUTES; RELATING TO DISSOLUTION OF MARRIAGE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 25-318, Arizona Revised Statutes, is amended to read:

25-318. Disposition of property; retroactivity; notice to creditors; assignment of debts; contempt of court

A. In a proceeding for dissolution of the marriage, or for legal separation, or in a proceeding for disposition of property following dissolution of the marriage by a court ~~which~~ THAT previously lacked personal jurisdiction over the absent spouse or previously lacked jurisdiction to dispose of the property, the court shall assign each spouse's sole and separate property to ~~such~~ THAT spouse. It shall also divide the community, joint tenancy and other property held in common equitably, though not necessarily in kind, without regard to marital misconduct. For the purposes of this section only, property acquired by either spouse outside this state shall be deemed to be community property if the property would have been community property if acquired in this state. ~~THE COURT MAY CONSIDER EXCESSIVE OR ABNORMAL EXPENDITURES, DESTRUCTION, CONCEALMENT OR FRAUDULENT DISPOSITION OF COMMUNITY, JOINT TENANCY AND OTHER PROPERTY HELD IN COMMON. THE COURT MAY ALSO CONSIDER ALL ACTUAL DAMAGES AND JUDGMENTS FROM CONDUCT THAT RESULTED IN A CRIMINAL CONVICTION OF EITHER SPOUSE IN WHICH THE OTHER SPOUSE OR A CHILD WAS THE VICTIM.~~

B. In dividing property, the court may consider all debts and obligations that are related to the property, including accrued or accruing taxes that would become due on the receipt, sale or other disposition of the property. The court may also consider the exempt status of particular property pursuant TO title 33, chapter 8.

~~C. This section does not prevent the court from considering all actual damages and judgments from conduct that resulted in criminal conviction of either spouse in which the other spouse or a child was the victim or excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of community, joint tenancy and other property held in common.~~

~~D. The community, joint tenancy and other property held in common for which no provision is made in the decree shall be from the date of the decree held by the parties as tenants in common, each possessed of an undivided one-half interest.~~

C. THE COMMUNITY, JOINT TENANCY AND OTHER PROPERTY HELD IN COMMON FOR WHICH NO PROVISION IS MADE IN THE DECREE IS HELD BY THE PARTIES, FROM THE DATE OF THE DECREE, AS TENANTS IN COMMON, WITH EACH PARTY POSSESSING AN UNDIVIDED ONE-HALF INTEREST. ANY COMMUNITY, JOINT OR OTHER COMMON DEBT OR OBLIGATION FOR WHICH A PROVISION IS NOT MADE IN THE DECREE ALLOCATING THE DEBT OR OBLIGATION IS DEEMED TO BE A JOINT DEBT OR OBLIGATION OF THE PARTIES AS OF THE DATE OF THE DECREE, AND EACH PARTY SHALL PAY AND INDEMNIFY AND HOLD THE OTHER PARTY HARMLESS FROM ONE-HALF OF THE DEBT OR OBLIGATION. THE COURT'S ALLOCATION OF TAX LIABILITY DOES NOT DEPRIVE EITHER PARTY OF ANY FEDERALLY RECOGNIZED DEFENSES TO THE LIABILITY.

D. THE COURT MAY ORDER AN UNEQUAL DIVISION OF PROPERTY, OR A DEBT OR OBLIGATION, OR GRANT A JUDGMENT WITH RESPECT TO PROPERTY OR A DEBT OR OBLIGATION IN A POST-DECREE PROCEEDING FILED BY EITHER PARTY WITHIN ONE HUNDRED EIGHTY DAYS AFTER DISCOVERY OF THE PROPERTY OR DEBT OR OBLIGATION FOR WHICH NO PROVISION IS MADE IN THE DECREE. IN DETERMINING WHETHER TO REALLOCATE PROPERTY, DEBTS OR OBLIGATIONS OR TO RENDER A MONETARY JUDGMENT WITH RESPECT TO PROPERTY, DEBTS OR OBLIGATIONS FOR WHICH NO PROVISION IS MADE IN THE DECREE, THE COURT SHALL APPLY THE STANDARDS PRESCRIBED IN SUBSECTION A, EXCEPT THAT:

1. IF ONE PARTY WILFULLY CONCEALED THE PROPERTY, THE OTHER PARTY MAY ELECT:

(a) AN AWARD OF THE PROPERTY ITSELF, AND A JUDGMENT FOR ALL NET RENTS, ISSUES AND PROFITS DERIVED FROM THE PROPERTY SINCE THE CONCEALMENT.

(b) A JUDGMENT AGAINST THE CONCEALING PARTY FOR THE GREATER OF THE VALUE OF THE PROPERTY AT THE TIME OF THE POST-DECREE DISPOSITION OR THE HIGHEST VALUE OF THE PROPERTY AT ANY TIME AFTER THE DECREE AND ALL NET RENTS, ISSUES AND PROFITS FROM THE PROPERTY SINCE THE CONCEALMENT.

(c) ANY COMBINATION OF SUBDIVISIONS (a) AND (b).

2. IF ONE PARTY WILFULLY CONCEALED THE DEBT OR OBLIGATION, THE OTHER PARTY MAY ELECT:

(a) TO HAVE THE COURT ASSIGN RESPONSIBILITY FOR THE DEBT OR OBLIGATION TO THE CONCEALING PARTY.

(b) A JUDGMENT AGAINST THE CONCEALING PARTY FOR THE PORTION OF THE DEBT OR OBLIGATION THAT THE OTHER PARTY PAID.

(c) ANY COMBINATION OF SUBDIVISIONS (a) AND (b).

3. THERE IS A PRESUMPTION THAT PROPERTY FOR WHICH NO PROVISION IS MADE IN THE DECREE AND THAT IS DETERMINED TO HAVE BEEN IN THE POSSESSION OR CONTROL OF ONE PARTY BUT THAT WAS NOT DISCLOSED TO THE OTHER PARTY WAS WILFULLY CONCEALED. THE CONCEALING PARTY HAS THE BURDEN OF PROVING BY A PREPONDERANCE OF THE EVIDENCE THAT THE PROPERTY WAS NOT WILFULLY CONCEALED. THERE IS ALSO A PRESUMPTION THAT DEBTS OR OBLIGATIONS FOR WHICH NO PROVISION IS MADE IN THE DECREE AND THAT WERE KNOWN BY A PARTY BUT THAT WERE NOT DISCLOSED WERE WILFULLY CONCEALED. THE CONCEALING PARTY HAS A BURDEN OF PROVING BY A PREPONDERANCE OF THE EVIDENCE THAT SUCH PROPERTY OR DEBT OR OBLIGATION WAS NOT WILFULLY CONCEALED. IF THE PROPERTY, DEBT OR OBLIGATION WAS WILFULLY CONCEALED, THE COURT SHALL AWARD REASONABLE ATTORNEY FEES, COSTS AND EXPENSES AGAINST THE CONCEALING PARTY.

E. The court may impress a lien on the separate property of either party or the marital property awarded to either party in order to secure the payment of:

1. Any interest or equity the other party has in or to the property.

2. Community debts that the court has ordered to be paid by the parties.

3. An allowance for child support or spousal maintenance, or both.

4. All actual damages and judgments from conduct that resulted in criminal conviction of either spouse in which the other spouse or a child was the victim.

F. The decree or judgment shall specifically describe by legal description any real property affected and shall specifically describe any other property affected.

G. This section applies through both prospective and retrospective operation to property without regard to the date of acquisition.

H. In all actions for the dissolution of marriage or legal separation, the court shall require the following statement in the materials provided to the petitioner and to be served on the respondent:

Notice

In your property settlement agreement or decree of dissolution or legal separation, the court may assign responsibility for certain community debts to one spouse or the other. Please be aware that a court order that does this is binding on the spouses only and does not necessarily relieve either of you from your responsibility for these community debts. These debts are matters of contract between both of you and your creditors (such as banks, credit unions, credit card issuers, finance companies, utility companies, medical providers and retailers).

Since your creditors are not parties to this court case, they are not bound by court orders or any agreements you and your spouse reach in this case. On request, the court may impose a lien against the separate property of a spouse to secure payment of debts that the court orders that spouse to pay.

You may want to contact your creditors to discuss your debts as well as the possible effects of your court case on your debts. To assist you in identifying your creditors, you may obtain a copy of your spouse's credit report by making a written request to the court for an order requiring a credit reporting agency to release the report to you. Within thirty days after receipt of a request from a spouse who is party to a dissolution of marriage or legal separation action, which includes the court and case number of the action, creditors are required by law to provide information as to the balance and account status of any debts for which the requesting spouse may be liable to the creditor. You may wish to use the following form, or one that is similar, to contact your creditors:

Creditor notification

Date: \_\_\_\_\_

Creditor name and

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Within thirty days after receipt of this notice, you are requested to provide the balance and account status of any debt identified by account number for which the requesting party may be liable to you.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(signature)

\_\_\_\_\_

(printed name)

I. On the written request of any party to a pending dissolution of marriage or legal separation action, the court, except for good cause shown, shall issue an order requiring any credit reporting agency to release the credit report as to the spouse of the requesting party on payment by the requesting party of any customary fee for providing the credit report.

J. On the request of either party and except for good cause shown, the court shall require the parties to submit a debt distribution plan that states the following:

1. How community creditors will be paid.

2. Whether any agreements have been entered into between the parties as to responsibility for the payment of community debts, including what, if any, collateral will secure the payment of the debt.

3. Whether the parties have entered into agreements with creditors through which a community debt will be the sole responsibility of one party.

K. The following form may be used to verify agreements with creditors:

#### Agreement with creditor

The parties to this agreement include \_\_\_\_\_ and \_\_\_\_\_ who are parties to a dissolution of marriage action filed in \_\_\_\_\_ county superior court, Arizona, case number \_\_\_\_\_ and \_\_\_\_\_ who is a duly authorized representative of \_\_\_\_\_ (creditor).

The undersigned parties agree that the debt owed by the parties to \_\_\_\_\_ (creditor) is to be disposed of as follows (check one):

\_\_\_\_ The debt is the joint responsibility of the parties, with payment to be made on the following terms: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_ The balance of the debt is the sole responsibility of \_\_\_\_\_ and the creditor releases \_\_\_\_\_ from any further liability for that debt, with payment to be made on the following terms: \_\_\_\_\_

\_\_\_\_\_

1 \_\_\_\_\_  
 2 \_\_\_\_\_  
 3 \_\_\_\_ The debt has been paid in full as of this date.  
 4 We the undersigned acknowledge this agreement.  
 5 Dated: \_\_\_\_\_  
 6 \_\_\_\_\_  
 7 Debtor Debtor  
 8 \_\_\_\_\_  
 9 Creditor's representative  
 10 Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_,  
 11 \_\_\_\_\_.  
 12 \_\_\_\_\_  
 13 \_\_\_\_\_

14 Notary Public  
 15 L. If the parties are not able to agree to a joint debt distribution  
 16 plan pursuant to subsection J, the court may order each party to submit a  
 17 proposed debt distribution plan to the court. In its orders relating to the  
 18 division of property, the court shall reflect the debt distribution plan  
 19 approved by the court and shall confirm that any community debts that are  
 20 made the sole responsibility of one of the parties by agreement with a  
 21 creditor are the sole responsibility of that party.  
 22 M. An agreement with a creditor pursuant to subsection K that assigns  
 23 or otherwise modifies repayment responsibility for community debts secured by  
 24 real property located in this state shall include all of the following:  
 25 1. A legal description of the real property.  
 26 2. A copy of the note and recorded security instrument, the repayment  
 27 of which is to be assigned or modified by the agreement with a creditor.  
 28 3. A written and notarized acknowledgment that is executed by all  
 29 parties to the debt, including the lender, and that states one of the  
 30 following:  
 31 (a) The terms for the repayment of the debt remain unchanged.  
 32 (b) The terms for the repayment of the debt have been modified and,  
 33 beginning on the date of the execution of the acknowledgment, the creditor  
 34 has agreed that one of the debtors assumes the sole responsibility for the  
 35 debt and that the other debtor is released from any further liability on the  
 36 debt.  
 37 (c) The debt is paid in full and all parties to the debt are released  
 38 from any further liability.  
 39 N. An agreement executed pursuant to subsection M shall be recorded by  
 40 either party in the county in which the real property is located.  
 41 O. After an agreement is recorded pursuant to subsection N, either  
 42 party may request that on payment of the title company's fees for the  
 43 document a title company authorized to do business in this state provide the  
 44 requesting party with a lien search report or other documentary evidence of  
 45 liens and other agreements of record in the title to the property.

P. If a party fails to comply with an order to pay debts, the court may enter orders transferring property of that spouse to compensate the other party. If the court finds that a party is in contempt as to an order to pay community debts, the court may impose appropriate sanctions under the law. A party must bring an action to enforce an order to pay a debt pursuant to this subsection within two years after the date in which the debt should have been paid in full.

Q. Within thirty days after receipt of a written request for information from a spouse who is a party to a dissolution of marriage or legal separation action, which includes the court and case number of the action, a creditor shall provide the balance and account status of any debts of either or both spouses identified by account number for which the requesting spouse may be liable to the creditor.

R. If any part of the court's division of joint, common or community property is in the nature of child support or spousal maintenance, the court shall make specific findings of fact and supporting conclusions of law in its decree.

S. IN ALL ACTIONS FOR DISSOLUTION OF MARRIAGE, LEGAL SEPARATION OR ANNULMENT, WITHIN THIRTY DAYS AFTER FILING THE PETITION, THE PETITIONER SHALL FILE WITH THE COURT IN A FORM PRESCRIBED BY THE SUPREME COURT A SCHEDULE OF ALL ASSETS AND DEBTS OR OTHER OBLIGATIONS OF EITHER PARTY AS OF THE DATE THE PETITION WAS FILED AND WITHIN ONE YEAR PRECEDING THE FILING OF THE PETITION. WITHIN THIRTY DAYS AFTER SERVICE OF THE PETITIONER'S SCHEDULE, THE RESPONDENT SHALL FILE A SUPPLEMENTAL SCHEDULE IN A FORM PRESCRIBED BY THE SUPREME COURT THAT DISCLOSES ANY ADDITIONAL ASSETS AND DEBTS OR OBLIGATIONS OF EITHER PARTY AS OF THE DATE THAT THE PETITION WAS FILED AND ONE YEAR BEFORE THE FILING OF THE PETITION. PURSUANT TO APPLICABLE LAW, EACH PARTY SHALL AMEND AND UPDATE THAT PARTY'S SCHEDULE WITH ANY MATERIAL CHANGES OF INFORMATION OR CORRECTIONS DURING THE COURSE OF THE PROCEEDING. UNLESS OTHERWISE ORDERED BY A COURT PURSUANT TO A SHOWING OF GOOD CAUSE, SCHEDULES FILED WITH THE COURT PURSUANT TO THIS SUBSECTION ARE CONFIDENTIAL AND ARE NOT AVAILABLE TO THE PUBLIC. THE COURT MAY NOT ENTER A DECREE OF DISSOLUTION OF MARRIAGE, LEGAL SEPARATION OR ANNULMENT UNLESS THE SCHEDULES HAVE BEEN FILED WITH THE CLERK OF COURT, EXCEPT THAT ONLY THE PETITIONER IS REQUIRED TO FILE SCHEDULES IN CONNECTION WITH AN ENTRY OF AN UNCONTESTED DEFAULT DECREE OF DISSOLUTION, LEGAL SEPARATION OR ANNULMENT.

Sec. 2. Effective date

This act is effective from and after December 31, 2009.